

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

THE H.D.D. COMPANY, INC., A
CORPORATION OF OREGON, an Oregon
corporation,

Plaintiff,

v.

NAVIGATORS SPECIALTY INSURANCE
COMPANY, a foreign corporation,

Defendant.

No. 3:19-cv-00115

**NOTICE OF REMOVAL OF CIVIL
ACTION UNDER 28 U.S.C. §1441**

TO: The Clerk of the United States District Court of Oregon – Portland Division

AND TO: Plaintiff, and their Counsel of Record, Christopher T. Carson

Please take Notice that NAVIGATORS SPECIALTY INSURANCE COMPANY
(hereinafter referred to as “Navigators”) hereby removes to this Court the state court action
described below:

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I. The Subject Action

1 On December 21, 2018, Plaintiff The H.D.D. Company, Inc., a Corporation of
2 Oregon (hereinafter “Plaintiff”) filed an action in the Circuit Court of Oregon for the County of
3 Multnomah, which was assigned cause number 18-cv-58262. A copy of the original Summons
4 and Complaint are attached as **Exhibits A and B**, respectively.

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6 2. On December 31, 2018, the Director of Oregon Department of Consumer and
7 Business Services, Division of Financial Regulation, was served with a copy of the Summons
8 and Complaint.

II. Diversity of Citizenship

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11 3. In the Complaint, Plaintiff alleges that it is a corporation organized under the laws
12 of the State of Oregon. Plaintiff’s principal place of business is in the State of California.
13 Therefore, Plaintiff is a citizen of the State of California and the State of Oregon. **Exhibit B.**

14 4. Navigators is an insurance company organized under the laws of the State of New
15 York. Navigators’ principal place of business is in the State of New York. Therefore, Navigators
16 is a citizen of the State of New York.

III. Amount in Controversy

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19 5. According to Plaintiff’s Complaint, Plaintiff is a subcontractor enrolled in a
20 Contractor Controlled Insurance Program for a project known as the North Mist Pipeline
21 Expansion Project (hereinafter the “Project”). *See Ex. B.* SNC-Lavalin Constructors, Inc.
22 (hereinafter “SNC-Lavalin”) was the general contractor for the Project. *Id.* at ¶3. Plaintiff alleges
23 that during the time Plaintiff performed subcontracting work for the Project, it was insured under
24 Policy No. SF17CGL210739IC (hereinafter the “Policy”) issued by Navigators. *Id.*

1 6. Plaintiff's Complaint alleges that SNC-Lavalin issued a demand for arbitration
2 alleging damages against Plaintiff. *Id.* at ¶4. Plaintiff now alleges that Navigators breached the
3 Policy by refusing to defend Plaintiff against the claims alleged in SNC-Lavalin's demand for
4 arbitration. *Id.* at ¶12. Specifically, Plaintiff alleges that "Navigators' breach of contract has
5 caused H.D.D. to incur direct and consequential damages, including but not limited to the cost of
6 defense in defending the claim in arbitration." *Id.* at ¶13.

7 7. Plaintiff further seeks a legal declaration that Navigators is obligated to defend
8 Plaintiff against the claims contained in SNC-Lavalin's demand for arbitration. *Id.* at ¶8.

9 8. Plaintiff is seeking approximately \$200,000 in damages, and expects this figure to
10 increase as the arbitration proceeds. *Id.* at ¶13.

11 9. Plaintiff is also seeking its reasonable attorney fees under ORS 742.016. *Id.* at
12 ¶15.

13 10. The jurisdictional amount in controversy requirement may be satisfied by claims
14 for both general and specific damages as well as claims for attorney's fees authorized by law.
15 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005); *Galt v. Scandinavia*, 142 F.3d
16 1150, 1155-1156 (9th Cir. 1998). When an unspecified amount of damages is alleged, the court
17 is permitted to consider facts contained in the removal petition to determine whether the amount
18 in controversy requirement has been satisfied. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th
19 Cir. 2005) (citing *Singer v. State Farm Mutual Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)).

20 11. As discussed above, Plaintiff is seeking approximately \$200,000 in damages for
21 their breach of contract claim as well as unspecified consequential damages and attorney fees
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1 under ORS 742.061. Therefore, Plaintiff has more than satisfied the amount in controversy
2 jurisdictional requirement.

3 12. For the foregoing reasons, Navigators has demonstrated that the amount in
4 controversy in this matter exceeds \$75,000.

5 **IV. Jurisdiction**

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7 13. For the purpose of determining jurisdiction under 28 U.S.C. §1332, Navigators is
8 a citizen of the State of New York and Plaintiff is a citizen of the State of California and the
9 State of Oregon. As a result, Plaintiff and Navigators are citizens of different states and complete
10 diversity exists.

11 14. The amount in controversy exceeds \$75,000.

12 15. This Court, therefore, has jurisdiction over this controversy under 28 U.S.C.
13 §1332 and 28 U.S.C. §1441.

14 **V. Timeliness**

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16 16. Plaintiff filed the Complaint on December 21, 2018. The Summons and
17 Complaint were served on the Director of Oregon Department of Consumer and Business
18 Services, Division of Financial Regulation on December 31, 2018. This Notice of Removal is
19 being filed on January 23, 2019. As a result, this Notice of Removal is timely under 28 U.S.C.
20 §1446.

21 **VI. Copies of Process, Pleadings, Orders, and Motion in State Court Proceedings**

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23 17. In accordance with 28 U.S.C. §1446, attached to this Notice of Removal as
24 Exhibits A through B are true and correct copies of the pleadings, process, orders, additional

1 records, and additional proceedings in the Circuit Court of the State of Oregon for Multnomah
2 County. These documents are:

3 A. Summons and Affidavit of Service; and

4 B. Complaint.
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6 18. Notice of this removal will be filed with the Clerk of the Circuit Court of the State
7 of Oregon for Multnomah County and will be given to all other parties, in accordance with 28
8 U.S.C. §1446.

9 DATED this 24th day of January, 2019.

10 LETHER & ASSOCIATES

11 s/ Thomas Lether

12 Thomas Lether, OSBA #101708

13 1848 Westlake Avenue N, Suite 100

14 Seattle, WA 98109

15 P: (206) 467-5444/F: (206) 467-5544

16 tlether@letherlaw.com

17 *Counsel for Defendant Navigators Specialty*
18 *Insurance Company*

CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Oregon that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the parties mentioned below as indicated:

Christopher T. Carson
Kilmer, Voorhees & Laurick, P.C.
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Portland, Oregon 97209
(503) 224-0055
ccarson@kilmerlaw.com
Attorney for Plaintiff The H.D.D. Company, Inc.

By: ☒ **E-service**

Dated this 24th day of January, 2019, at Seattle, Washington.

s/ Elizabeth Kruh
Elizabeth Kruh | Paralegal